RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ६, अंक ८] गुरुवार ते बुधवार, मे १-७, २०१४/वैशाख ११-१७, शके १९३६ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

BEFORE THE MEMBER, INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR

REVISION APPLICATION (ULP) No. 175 of 1997—The Sarpanch, Gram-panchayat, Kavalapur, Tal. Miraj, Dist. Sangli.—*Petitioner—Versus*—Adinath Baburao Mulay, Sangli Zilla Grampanchayat-Karmachari Sanghatana, 598/B, Khan Bhag, Sangli—*Respondent.*

In the matter of Revision U/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM—Shri C. A. Jadhav, Member.

Advocates.—Shri U. B. Suryawanshi, Advocate for the Petitioner.

Shri M. R. Kumbhar, Advocate for the Respondent.

Judgment

This is a Revision by original Respondent Grampanchayat challenging legality of judgment and order passed in Complaint (ULP) No. 199 of 1991 by the Labour Court, Sangli whereby he is directed to reinstate his employee original Complainant with continuity of service and full back wages.

2. Present Respondent (hereinafter referred to as the Complainant) filed above complaint on 19th June, 1991 alleging that he was working under present petitioner (hereinafter referred to as the Grampanchayat) from 30th October, 1984 as a Valveman and was doing work of opening and closing valves of Water Supply Scheme. He was working as unskilled worker and had no knowledge of any technical work. Pump Operator Shri Rasal retired on 31st March 1991. Grampanchayat's Sarpanch then directed him and his co-worker Shri Mohite to do work of Pump Operator alternatively for a period of one month each. He (the Complainant) had no knowledge of technical work and stated his unwillingness to do work of Pump Operator.

The Sarpanch then did not allow him to work and illegally terminated him by order dated 11th April, 1991. According to the Complainant, this termination is an unfair labour practice under items 1(*a*), (*b*), (*d*) and (*f*) of Sch. IV of the M.R.T.U. and P.U.L.P. Act. Eventually, he claimed reinstatement with continuity of service and full back wages.

3. The Sarpanch filed written statement (Exh. C-4) on behalf of Grampanchayat contending that there are no separate categories or posts like pump operator and valveman. The Complainant was directed to operate pump from 1st April 1991 on retirement of Shri Rasal. But the Complainant did not attend the duties from 1st April 1991. Eventually, the Complainant was informed by letter dated 11th April 1991 that he is discharged from service as lost lien over the employment. Thus, the Sarpanch justified its action.

4. Issues came to be framed at Exh. C-3 on 11th April 1995 and the parties went to the trial. It appears that the Complainant filed his affidavit (Exh. U-7) on 9th January 1996 and the matter was then kept for his cross-examination but the Sarpanch and his Advocate were absent on those dates. The Labour Court then proceeded further in their absence, accepted Complainants case and allowed the Complainant as above, *vide* judgment and order dated 10th March 1997. The same is challenged in this Revision.

5. I heard both Advocates. Considering their submissions, following points arise for my determination :—

(*i*) Whether impugned decision needs interference ?

(*ii*) What order ?

6. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is partly allowed, and the Complaint is remanded.

Reasons

7. It has come on the record that now the Grampanchayat has allowed the Complainant from 19th November 2001 to join duties.

8. Shri Suryawanshi, learned Advocate for Grampanchayat submitted that question regarding Complainants gainful employment from 11th April 1991 till 10th March 2001 is material. Grampanchayat asked the Complainant to join the duties as per interim order of the Labour Court but the Complainant himself did not resume. There is absolutely no evidence on record on Complainants part regarding efforts to get another employment after the termination. On the contrary, he is totally silent in his affidavit (Exh. U-7). Even then, the Labour Court directed reinstatement with full back wages. In fact, the Complainant is bound to disclose material fact regarding his gainful employment which are within his personal knowledge. He therefore, submitted that the matter be remanded back for fresh hearing.

9. Advocate Shri Kumbhar replied that the Grampanchayat did not allow the Complainant to join duties despite interim order of Labour Court and hence grant of full back wages is well justifiable.

10. Controversy regarding gainful employment of the Complainant from 11th April 1991 till 10th March 1997 as well as onwards thereof has much hearing on his alleged claim of back wages. Complainants affidavit (Exh. U-7) is totally silent about the gainful employment. He has not even affirmed that he was idle during the intervening period. Burden lies upon him to prove facts which his personal knowledge. Simultaneously, it is right of the Grampanchayat to lead evidence about Complainants gainful employment, if any, on the question of back wages. In such circumstances, I find it that learned Labour Court granted back wages without any material on record in either way. In my opinion, therefore, it is necessary to permit the parties to lead evidence by remanding the matter. Accordingly I answer Point No. 1 in the affirmative and pass following order.

Order

(i) The Revision application is partly allowed.

(ii) Impugned decision of the Labour Court is set aside.

(iii) The Labour Court is directed to permit both parties to lead evidence on all issues including issue of gainful employment and decide the complaint afresh, according to provisions of law.

(iv) R. & P. be sent to Labour Court, Sangli and the parties shall appear there on 19th August 2002.

(v) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 20th July 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR

COMPLAINT (ULP) No. 815/2001.—Karveer Kamgar Sangh, 635, C-Bindu Chowk, Kolhapur, Through its Secretary—*Complainant*—*Versus*—(1) Vin Auto Parties, Atigre, Tal. Hatkanangale, Dist. Kolhapur, (2) Vijaya Engineering, Atigre, Tal. Hatkanangale, Dist. Kolhapur. (Notice to be served on Partner Shri Suresh Tukaram Ghosalkar and Sou. Vijaya Suresh Ghosalkar) (Both resident of 25-C, Sai-Sagar, Tarabai Park, Kolhapur)—*Respondents.*

In the matter of Complaint U/s. 28 (1) read with item 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM—Shri C. A. Jadhav, Member.

Advocates.—Shri A. G. Pansare, Advocate for the Complainant.
Respondent absent.

Judgment

This is a Complaint by a Trade Union under section 28 (1) read with items 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

2. It has come on the record that the Complainant Union filed Complaint (ULP) Nos. 8 and 9 of 1998 against present Respondents before Labour Court, Kolhapur alleging certain unfair labour practices. Both complaints were allowed granting declaration of unfair labour practice and present Respondents are directed to pay wages of involved employees and continuity of service alongwith closure compensation *vide* judgment and order dated 31st August 2001.

3. Now, this Complaint is filed on 20th September, 2001 reiterating similar contentions like raised in above complaints. In addition, it is contended that order passed by the Labour Court, Kolhapur in above complaints is not complied. Back wages, closure compensation and gratuity is not paid and obligations under the Provident Funds Act are not fulfilled. Consequently, a declaration of unfair labour practice and necessary directions are prayed.

4. The Respondents were served by substituted service and an adjournment was sought to file the say. But no written statement was filed thereafter despite ample opportunity. Eventually, the case proceeded without written statement of the Respondents.

5. Now, followings points arise for my determination :—

(*i*) Does the Complainant prove that the Respondents have engaged in unfair labour practice under Item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971?

(*ii*) What order ?

6. My findings, on above points are as under :—

(*i*) Yes.

(*ii*) The Complaint is allowed.

Reasons

7. The Complainant has produced copy of common judgment and order passed in Complaint (ULP) Nos. 8 and 9 of 1998 by the Labour Court. Its Secretary has filed an affidavit (Exh. U-13) in support of averments in the complaint. His affirmation stands unrebutted. There is no reason to disbelieve the same. Besides, the same is coroborated by judgment of learned Labour Court. As such, failure to comply order of the Labour Court is an unfair labour practice. Learned Labour Court has already directed payment of back wages and closure compensation. As such, it is not necessary to repeat the same directions here. A direction to forward Provident Fund Papers to concerned office, so that the employees can withdraw amount thereof is sufficient. Finally, I pass following order :—

Order

(*i*) The complaint is partly allowed.

(*ii*) It is declared that Respondents 1 and 2 have engaged in unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

(*iii*) Respondents 1 and 2 are directed to cease and desist from continuing of such unfair labour practice forthwith.

(*iv*) Respondents 1 and 2 are directed to forward Provident Fund Papers of all employees named in Annexure 'A' of the complaint to Provident Fund Office so as to enable them to withdraw amounts thereof, within 15 days from today.

(*v*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 30th July 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 173 OF 2002.—Shri Bandu Yashwant Patil, R/o. Mahe, Tal. Karveer, Dist. Kolhapur.—*Complainant—Versus*—Shri Hanuman Sahakari Dudh Vikas Sanstha Ltd., Mahe, Tal. Karveer, Dist. Kolhapur.—*Respondent.*

In the matter of Complaint U/s. 28 (*1*) read with item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— A. G. Pansare, Advocate for the Complainant.
Shri R. L. Chavan Advocate & Shri S. V. Suryawanshi, Advocate for the Respondent.

Judgment

This is a complaint purported to be under section 28 (*1*) read with item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

2. Admittedly, the Complainant is in employment of Respondent Society as a Secretary. The Society is registered under the Maharashtra Co-operative Societies Act. The Society suspended the Complainant by order dated 21st July 2001 pending an enquiry and served chargesheet dated 19th January 2002 upon him alleging certain misconducts. The major misconduct is fraud and misappropriation of Society's money and falcification of accounts thereof. Now, the enquiry is in progress.

3. It is case of the Complainant that provisions of Industrial Employment (Standing Orders) Act, 1946 are not applicable to the Society, however, a chargesheet is issued to him under said Act and the enquiry is also started as per said Act. The action of issuing chargesheet under the Industrial Employment (Standing Orders) Act, when the said Act is not applicable, is illegal and unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. Therefore, chargesheet and the enquiry are liable to be quashed and set aside and he is entitled to full monthly wages.

4. On above averments, the Complainant has prayed for declaration of requisite unfair labour practice, to quash and set aside the chargesheet and the enquiry and other consequential reliefs.

5. The Society filed its written statement at Exh. C-3 contending that the Complainant misappropriated huge amount to the tune of Re. 1 lakh and tampered entire record. Chargesheet was served upon the Complainant for extending reasonable opportunity of being heard to the Complainant and to follow principles of natural justice. The Bombay Shops and Establishment Act is applicable to the Society and hence the Chargesheet is legal and proper. In the alternate, it is case of the Society that principles laid down in Industrial Employment (Standing Orders) Act are followed and the Chargesheet containing specific charges is served. No objection was taken from 19th January 2002 before the Enquiry Officer that the chargesheet cannot be issued. Thus, the Respondent justified its action and prayed for dismissal of the complaint.

6. The Complainant made an Application (Exh. U-2) under section 30 (*2*) of the M.R.T.U. and P.U.L.P. Act to stay the enquiry till disposal of main complaint. However, with consent of both Advocates, the complaint itself was taken for hearing.

7. Considering rival pleadings, following points arise for my determination :—

(*i*) Does the Complainant proved that the chargesheet and subsequent enquiry thereof is bad in law ?

(*ii*) Does the Complainant prove that the Society has indulged into unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act ?

(*iii*) What order ?

8. My findings, on above points are as under :—

(*i*) No.

(*ii*) No.

(*iii*) The complaint is dismissed.

Reasons

9. The Complainant has produced copy of the chargesheet, copy of application dated 15th June 2002 made to the Enquiry Officer for directing the Society to produce rules and Bye-laws of issuing chargesheet. Society's Advocate has endorsed on said Application that enquiry is initiated for extending reasonable opportunity of being heard to the Complainant and the chargesheet is issued under the Industrial Employment (Standing Orders) Act.

10. No documentary evidence was adduced by the Society. None of the parties led oral evidence.

11. It is contention of the society that it is covered by Industrial Employment (Standing Orders) Act by virtue of section 38-B of the Bombay Shops and Establishments Act. Section 38-B of the Bombay Shops and Establishment Act says that provisions of Industrial Employment (Standing Orders) Act shall, *mutatis-mutandis* apply to all establishments wherein 50 or more employees are employed to which said Act applies as if they were industrial establishments within the meaning of said Act. In the present case, there is nothing on record to show that the Society has 50 or more employees. Eventually, it cannot resort to provisions of section 38-B of the Bombay Shops and Establishments Act.

12. Shri Pansare, learned Advocate representing the Complainant took me through the chargesheet and pointed out that paragraph No. 7 thereof says that alleged misconducts are misconducts under the Industrial Employment (Standing Orders) Act. He then canvassed that alleged misconducts cannot be said to be misconducts as Industrial Employment (Standing Orders) Act is not applicable to the society. He then added that the Society can resort to criminal action but cannot proceed under the Industrial Employment (Standing Orders) Act. Consequently, the very act of issuing chargesheet and commencement of enquiry there under is illegal and should be quashed and setaside.

13. Shri Suryawanshi, learned Advocate representing the Society replied that principles underlying the Industrial Employment (Standing Orders) Act are invoked while issuing the chargesheet. Interestingly, the suspension is nowhere challenged. As such, there is nothing unfair on Society's part. Misconducts under Model Standing Orders are simply referred in the chargesheet for furnishing better particulars of the charges. There is nothing in the complaint that priniples of natural justice are violated during the enquiry. The Complainant may point out any other Act whereunder there can be more fair way of making and enquiry then provided under the Industrial Employment (Standing Orders) Act. Finally, he submitted that the misconducts are serious and the chargesheet cannot be quashed or set aside.

14. The Industrial Employment (Standing Orders) Act was passed with the main object to require the employers in industrial establishments to which the Act applies, to define formerly the terms and conditions of employment in their respective establishments. It was intended that the terms and conditions of Industrial employment should be well defined and should be known to the employees before they accept the employment. In other words, the Act was passed to introduce uniformity of terms and conditions of employment in respect of workmen. In short, the Act is of regulatory nature. If the Society is resorting to apply principles underlying the Industrial Employment (Standing Orders) Act, in my judgment, there is nothing unfair on its part. On the contrary, it is resorting to principles of natural justice and extending opportunity of being heard to the Complainant. It has appointed an independant Enquiry Officer to enquire into the charges. The Complainant has sufficient opportunity in the enquiry, can put his case and the Enquiry Officer then can record his finding, in either way. Eventually, the Complainant is not prejudiced in any way. It cannot be accepted that no enquiry can be made regarding

alleged misconducts of the Complainant on the ground that provisions of Industrial Employment (Standing Orders) Act are not applicable to the Respondent Society. The very preamble of the Act says that it is an Act to provide for defining with sufficient precision, certain conditions of employment in industrial establishments in the State of Bombay. In fact, the Act is beneficial legislation. Consequently, it cannot be accpted that the chargesheet and subsequent enquiry thereof is bad in law.

15. The very object of furnishing a chargesheet is to given an opportunity to the person who is charged with misconduct to give an explanation to defend himself. The Rules of natural justice requires that the person charged should know the nature of charges with which he is charged and should be given an opportunity to defend himself and to give a proper explanation. In the present case, the society is resorting to the rules of natural justice and the same cannot be said to be an unfair labour practice. The Society wishes to give fair hearing to the Complainant and hence has initiated the enquiry, as such the same cannot be quashed and setaside.

16. To summarise, the Society is resorting to the principles of natural justice and therefore, has served a chargesheet upon the Complainant. It is extending an opportunity of being heard to the Complainant. Such acts of the Society cannot be said to be an unfair labour practice on the ground that Industrial Employment (Standing Orders) Act is not applicable to it. Eventually, the chargesheet and subsequent enquiry is not bad in law and there is no unfair labour practice on society's part. Accordingly, I answer Point Nos. 1 and 2 in the negative and pass following order.

Order

(*i*) The Complaint is dismissed.

(*ii*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 30th July 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE MEMBER, INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 295 of 1995.—Shri Madhukar Anant Jadhav, R/o. New S. T. Colony, Sanjaynagar, Sangli.—*Complainant Versus*—(1) General Manager, Government Milk Scheme, Miraj, Dist. Sangli.—*Respondent No. 1*, (2) Regional Dairy Development Officer, Commonwealth Building, Third Floor, Laxmi Road, Pune-30.—*Respondent No. 2,* (3) Dairy Development Commissioner, Maharashtra State, New Administrative Building, Khan Abdul Gafarkhan Marg, Worli Sea Face, Mumbai-18—*Respondent No. 3.*

In the matter of Complaint U/s. 28 (*1*) read with items 5, 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri H. G. Bhokare, Advocate for the Complainant.
Shri D. J. Mangsule, Asstt. Government Pleader for the Respondents.

Judgment

This is a Complaint under Sec. 28 (*1*) read with items 5, 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971.

2. Admittedly, the Complainant started working as Junior Clerk from 10th March 1966 under Respondent No. 1 *i. e.* General Manager of Government Milk Scheme at Miraj. Respondent No. 3 *i. e.* Dairy Development Commissioner of Maharashtra State is his appointing authority. The Complainant then started working as Accounts Clerk from 1st February 1969 in the same scale and grade. Thereafter, he was promoted on the post of Senior Assistant (Cashier) and he started working on such post from 6th August 1974. Respondent No. 2 *i. e.* Regional Dairy Development Officer, Pune prepared seniority list of Senior Assistant in the year 1983. In said list, one Shri B. K. Joshi was at Sr. No. 17 the Complainant at Sr. No. 18 and one Shri S. V. Kate at Sr. No. 36. It is not in dispute that next promotional post for the post of Senior Assistant is of Head Clerk.

3. It has also come on the record that Heard Clerk Shri Rajguru was transferred from Mahabaleshwar to Miraj. Eventually, Shri B. K. Joshi who was working as Senior Assistant was promoted and transferred on the post of Head Clerk at Mahabaleshwar by Respondent No. 2's order dated 15th February, 1979. One Shri H. D. More, was working as Head Clerk with Government Milk Scheme, Satara. He was reverted and then post of Head Clerk at Satara became vacant. Government Milk Scheme, Satara comes under Pune Region. Shri S. V. Kate was working as Senior Assistant at Satara Milk Scheme. Respondent No. 2 then promoted Shri S. V. Kate on the post of Head Clerk, *vide* order dated 20th January 1986.

4. This complaint was filed on 19th September, 1995, *inter-alia*, contending that the Complainant was senior most Senior Assistant and eligible to be promoted on the vacant post of Head Clerk at Satara. Shri S. V. Kate was Junior to him and was at Sr. No. 36 in the Seniority List of Senior Assistant. Even then Shri Kate was illegally promoted by superseding him.

5. It is further alleged that the Complainant was working in the year 1986 and Miraj and noticed for the first time on receipt of Seniority List of Head Clerks of the year 1986 that Shri Kate is promoted by superseding him. He then made representation on 16th September 1986 raising his grievances. Thereafter, he made representations time and again but no reply was given. Ultimately, Respondent No. 2 gave reply dated 28th June 1988 that Shri S. V. Kate is promoted considering his date of appointment. It is further alleged by the Complainant that then he made alaborate representations dated 8th August 1988 stating all particulars regarding Shri Kate's position in the seniority list of 1983 but there was no response. Eventually, he is constrained to file the complaint.

6. According to the Complainant, grant of promotion to Shri S. V. Kate, is contrary to service rules and is an unfair labour practice under items 5, 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. It is further alleged that the cause of action is recurring one and the complaint is within limitation.

7. On above averments, the Complainant has prayed for requisite declaration of unfair labour practice, direction to promote him on the post of Senior Clerk with effect from 24th January 1986 and other consequential reliefs.

8. Assistant Government Pleader Shri Samudre appeared on behalf of the Respondents and filed written statement at Exh. C-7. He contended that the Complainant joined on 10th March 1966 and was promoted as Senior Assistant on 6th August 1974. On the other hand, Shri S. V. Kate joined on 9th January 1965 and promoted on the post of Senior Assistant on 29th October 1979. Shri Kate was promoted on 16th October 1968 as per recommendations of Belegram Commission but the Complainant was not found suitable as was appointed as Accounts Clerk on 1st February 1967. The Complainant, therefore, was promoted on the post of Senior Assistant on 6th August 1974. Thereafter, as per recommendations of Bhole Commission, Shri Kate was qualified as Senior Assistant and therefore promoted on such post on 19th October 1980. Thus, Shri Kate was Senior to Complainant. It is further contended that Shri Kate complained on 20th January 1981 about injustice to him and, therefore, as per Government decision dated 26th February 1979 and covering letter dated 14th April 1981, Shri Kate was promoted as per seniority list prepared as per office order dated 15th December 1984. Thus, it is contended that grant of promotion to Shri Kate is as per seniority and promotion Rules. Finally, action of the Respondents is justified and dismissal of the complaint is prayed.

9. Considering rival pleadings, following points arise for my determination :—

(*i*) Does the Complainant prove that Respondent No. 2 unauthorisedly and illegally promoted Shri Kate by superseding him ?

(*ii*) Does the Complainant prove that the Respondent No. 2 has engaged in unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act ?

(*iii*) What order ?

10. My findings on above points, are as uder :—

(*i*) Yes.

(*ii*) Yes.

(*iii*) The complaint is partly allowed.

Reasons

11. Before considering rival contentions, some material facts which are well established on record, needs to be stated first.

12. Respondent No. 2 passed an order dated 14th January 1997 promoting the Complainant from the post of Senior Assistant to the post of Head Clerk and now the Complainant is working as Head Clerk since then. Secondly, Respondent No. 3 *i. e.* Dairy Development Commissioner, Maharashtra State sent a letter dated 16th September 2000 to Respondent No. 2. that senior employees are superseded while promoting Shri S. V. Kate, necessary corrections be made and compliance report alongwith explanation for promoting Shri S. V. Kate on the post of Head Clerk be sent to him. Later on, Respondent No. 2 cancelled promotion order dated 20th January 1986 promoting Shri S. V. Kate on the post of Head Clerk. Those documents are produced by the Complainant himself with list Exh. U-7/2/3.

13. The Complainant has produced copy of seniority list dated 8th September 1983 of Senior Assistants which is published by Respondent No. 2. He then produced copy of Seniority list of the year 1986. He also produced copies of representations dated 18th September 1986, 31st December 1987, 6th May 1988, 8th August 1988 and reminder dated 11th July 1994. He has also produced copies of other representations made by him through Clerical Union. Respondent No. 2 has given reply on dated 28th June 1988 that Shri S. V. Kate is promoted as is shown senior to the Complainant in the Seniority List and as Shri Kate has joined earlier. No oral evidence was adduced by the Complainant.

14. In rebuttal, Learned Assistant Government Pleader has produced promotion orders of Shri B. K. Joshi and Shri S. V. Kate alongwith notes thereof. Lateron, he produced Respondent No. 2's letter dated 1st April 2002 sent to Respondent No. 1 that as per Seniority List of the year 1998 and Complainant's seniority is not superseded and such fact be brought to the notice of Assistant Government Pleader so as to put the same before this Court. No oral evidence was led by the Respondents. No documents/orders which are referred in the written statement (Exh. C-7) are produced.

15. Shri Bhokare, Learned Advocate representing the Complainant submitted firstly that Shri Kate was illegally promoted in the year 1986 and hence his name is bound to be at higher level in the Seniority List of the year 1998. However, Seniority list of the year 1983 is the criteria while granting promotion on the post of Head Clerk and hence the Seniority List of the year 1998 has no evidentiary value. In fact, letter dated 16th September 2000 of Respondent No. 3 that Complainant's Seniority is superseded and then Respondent No. 2's order dated 20th September 2000 cancelling Shri Kate's promotion order are self eloquent and falcify entire defence. He further added that unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act is of continuing or recurring nature, the Complainant made representations from time to time was heping for a legal and proper reply and thus was deligent.

16. Learned Assistant Government Pleader Shri Mangsule replied that now the Complainant is already promoted on the post of Head Clerk and therefore, now cannot have any grievance. He was unable to argue as to how Shri Kate was promoted although is shown as junior to the Complainant in the seniority list of the year 1983.

17. It appears from the copies of representations made by the Complainant, individually as well as through the Union that he was delingent about his grievance. Shri S. V. Kate was shown at Sr. No. 17 in the Seniority List to Head Clerks dated 26th August 1986. Admittedly, he is promoted by order dated 20th January 1986 and hence was included in the Seniority List of Head Clerks. But Seniority List of Senior Assistants clearly establishes that he was junior to the Complainant. Note put up before Respondent No. 2 while promoting Shri S. V. Kate, nowhere refers about Complainant's seniority and reasons to supersede him. Respondent No. 3 on realising injustice to senior employees issued letter dated 16th September 2000 to Respondent No. 2. Eventually, the Respondent No. 2 has cancelled Shri S. V. Kate's promotion order by later order dated 29th September 2000. In such circumstances, justification in the written statement (Exh. C-7) does not stand to reason but rather *nilified* by Respondent No. 3 himself. In such circumstances, I have no difficulty in holding that Respondent No. 2 unauthorisedly and illegally promoted Shri Kate by superseding the Complainant. Accordingly, I answer Point No. 1 in the affirmative.

18. It is settled law that unfair labour practice covered by items 6 and 9 are the continuing or recurring unfair labour practices and hence the Complainant cannot be said to be barred by limitation. Eventually, I answer Point No. 2 in the affirmative.

19. The net result of above discussions and findings is that the Complainant was entitled to be promoted on the post of Head Clerk with effect from 24th January, 1986 and was entitled to have wages of said post from such date. Now, he is promoted on 14th January, 1997. As such, he is entitled to difference of wages for such period.

20. Finally, I pass the following order :—

Order

(*i*) The complaint is partly allowed.

(*ii*) It is declared that Respondent No. 2 has engaged in unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

(*iii*) The Respondent No. 2 is directed to cease and desist from engaging in such unfair labour practice forthwith.

(*iv*) Respondent No. 2 is directed to pay difference of wages to the Complainant from 24th January 1986 to 14th January 1997 presuming that the Complainant is promoted on the post of Head Clerk from 24th January 1986 within one month from to-day.

(*v*) The Complainant is also entitled to consequential benefits of such deemed promotion.

(*vi*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Maharashtra Kolhapur.

Kolhapur,
dated the 29th June 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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BEFORE THE INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR

REVISION APPLICATION (ULP) No. 72/2002.—Karveer Kamgar Sangh, 635, C-Bindu Chowk, Kolhapur, through its Secretary.—*Petitioner. V/s.* Menon And Menon Limited, Vikram Nagar, E Ward, Kolhapur.—*Respondent.*

In the matter of Revision U/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri A. G. Pansare, Advocate for the Petitioner.

Shri A. S. Nevgi, Advocate for the Respondent.

Judgment

This is a Revision by original Complainant and Union challenging legality of order passed below Exh. U-2 in Complaint (ULP) No. 90 of 2002 whereby, interim relief to allow its members to join duties till decision of main complaint is refused, by rejecting the interim application (Exh. U-2).

2. Admittedly, present Respondent (hereinafter referred to as the Company) gave notice of lock out dated 4th February 2001 that it intends to effect lock out from 8 a.m. of 18th September 2001 and suspended its operations from 4th September 2001, itself. It was stated in the notice that the lock out is applicable to all employees except 17 names in the list annexed as well as entire staff, Officers, Managers and persons superior to them. Two Unions *i. e.* present one and Menon and Menon Kamgar Karmachari Sanghatana are functioning in the Company. The other Union appears to be representing majority of the employees.

3. The other Union challenged the lock out before this Court *vide* Complaint (ULP) No. 802/2001. Present Complainant then joined said complaint. A settlement took place on 8th February 2002 between the other Union and the Company.

4. Present Petitioner (hereinafter referred to as the present Union) then filed above complaint on 30th April 2002 before Labour Court that the lock out is lifted on 8th February 2002. Settlement between the other Union and the Company is not made in conciliation and is not binding upon it. In fact, the same is obtained by duress and threat and is illegal and unjust too. By said agreement, the workers have given up their rights and it is against their interest. Now, the Company is insisting all of its employees including members of present Union to sign the Undertaking and are not allowing the employees to join duties who are unwilling to sign the Undertaking. It is alleged that company's such act amounts to oral termination on 8th February 2002 and is an unfair labour practice. Present Union also filed interim application (Exh. U-2) under Section 30 (*2*) of the M.R.T.U. and P.U.L.P. Act alongwith the complaint claiming interim relief as aforesaid.

5. The company filed its say cum written statement at Exh. C-14 and traversed all material allegations made by the Complainant Union. It contended that majority of its employees are members of the other Union. Interim application (Exh. U-2) filed in Complainat (ULP) No. 802 of 2001 before this Court came to be rejected. Then negotiations took place and a settlement was entered into on 8th February 2002 with the other Union. The lock out was lifted for employees/members of the other Union and who signed the agreement. Present Union refused to sign the settlement on various grounds and filed another interim application (Exh. UA-4) in Complaint (ULP) No. 802/2001. The same was rejected. Present Union the approached Government Labour Officer for intervention. Present Union never alleged from 8th February 2002 till filing this complaint that services of their members/employees were orally terminated. In fact, all of its employees except 24 members / employees have signed the settlement by accepting benefits and joined the duties. All such material facts are supressed and false case of oral termination dated 8th February 2002 is filed. It is further case of the Company that out of 18 employees out of 45 employees named in Annexure 'A' of the Company have signed the Undertaking. The insistance for undertaking is just and proper. Names of all members / employees of present Complainant are on the muster roll and, therefore, there is no termination at all. It is further contended that there is no termination, dismissal or discharge of any of the employees. Hence the complaint is not maintainable and the Labour Court has no jurisdiction to try and entertain the complaint.

6. Present Union filed Affidavit (Exh. U-3) of its Secretary in support of the interim application. The Company produced copies of interim orders passed by this Court in Complaint (ULP) No. 802/2002 and correspondence with the present Union.

7. The Labour Court, on perusal of papers and hearing both parties, observed that there is provision of giving individual undertaking in the settlement and the controversy is regarding the Undertaking. The lock out is lifted in respect of employees who have signed the undertaking and the others are continued to be on lock out. No case of oral termination was alleged in previous complaint as well as in negotiations and meetings before the Government Authorities. It, therefore, held that no *prima facie* case of unfair labour practice is made out and then reject the application (Exh. U-2) by order dated 17th July 2002. The same is challenged in this revision.

8. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned order refusing to grant interim relief warrants interference at this stage ?

(*ii*) What order ?

9. My findings on above points, are as under :—

(1) No.

(2) The revision application is dismissed.

Reasons

10. It needs to be stated at the outset that other Union challenged the lock out on various grounds, *vide* Complainant (ULP) No. 802/2001. As stated above, present Union joined the same. Interim Application (Exh. U-2) wherein was partly allowed on 15th October 2001 granting some reliefs to both Unions. However, relief of lifting suspension of work and lock out, pending the hearing and final disposal of main complaint came to be refused. Present Union then filed an application Exh. UA-4 to dircet the Company to allow its members/employees to join duties without signing the Undertaking and certain other reliefs. It was disposed of holding that controversy then in *i. e.* insistance of the Company to sign the undertaking is not an issue in said complaint nor is arising out of said complaint and present Union was granted liberty to take appropriate action by a separate proceedings.

11. Shri Pansare, learned Advocate representing the Union vehemently argued that the Labour has not at all applied its mind while deciding the controversy. In fact, there is no partial lifting of lock out. But conditional lifting of lock out. The Labour Court, observed that there is partial lifting of lock out and misdirected itself. He further added that observations in impugned order that Present Union has made out a prestige issue of the agreement and the Undertaking are unwarranted. He further submitted that allegations of compulsion to sign the Undertaking were made in the interim Application (Exh. UA-4) in Complaint (ULP) No. 802/ 2002. Legality of settlement is not the issue but the issue is whether the settlement binds present Union as present Union is not a party to the settlement. It is not entered into any conciliation and hence not binding upon present Union. In support of his arguments he relied on a devision of Hon'ble Apex Court in *Baruni Refinery Pragatisheel Shramik Parishad V/s. Indian Oil Corporation Ltd. reported in 1990 II CLR at page 217.* He submitted that Company's such act amounts to termination. Finally, he submitted that the Revision Application be allowed.

12. Shri Nevgi, learned Advocate representing the Company took me through the Complaint (Exh. U-1) and contended that legality of the settlment is the back-bone of the Complaint. Eventually, no clauses under item 1 of Sch. IV of the M.R.T.U. and P.U.L.P. Act as alleged, are attracted. In fact, plea of jurisdiction is specifically raised in paragraph (D) of the Complaint. Present Union nowhere alleged till presentation of the complaint that there is oral termination. As such, no revision needs to be entertained at the interlocutory stage. He placed reliance on the decision in *Maharashtra State Road Transport Corporation V/s. Shri Nanuram Verma reported in 2001 Lab. I. C. at page 1536.* He further added that grounds in the Revision Memo also pertain to legality of the settlement. As such, the Labour Court was well justified in refusing to grant the interim relief.

13. No doubt, present Union has not alleged in the interim application (Exh. UA-4) of Complaint (ULP) No. 802/2001 that services of its members/employees are orally terminated. However, termination was not and cannot be an issue before the Labour Court. Therefore, failure to plead termination in Complaint (ULP) No. 802 of 2001 is of no help to either of the parties.

14. Allegations in the complaint file before the Labour Court move around the legality of settlement and its binding nature upon present union. The Company has come with a case that insistance of the undertaking is just and proper. The Company has produced copies of its correspondence with present union. It is stated in its letter dated 1st March 2002 that in the past, some Union leader raised grievance and hence some provisions are made in the settlement. *Prima facie*, issue of the undertaking is material controversy. I am respectfully bound by the decisions relied by both Advocates. The controversy is to be marked out by considering rival pleadings and some pleadings cannot be taken out of the context to mark out the same. It has to be decided whether the Company is justified in demanding the undertaking or not. If there is no justification then it may amount to unfair labour practice.

15. Scrutiny of the terms and nature of the undertaking and its propriety in the peculiar facts and circumstances of the case cannot be decided at the interlocutory stage. In such circumstances, *prima facie*, it is difficult to accept that insistance of the undertaking by the Company amounts to oral termination. The fact that present Union did not come with a case of oral termination till presentation of this complaint cannot be ignored. In other words, *prima facie*, inference of oral termination at this stage will be arbitrary and cannot be drawn safely. It is settled law that no interim relief can be granted, unless a *prima facie* finding of unfair labour practice is recorded.

16. In the background of above discussions, I am of the opinion that learned Labour Court was well justified in declining to grant the interim relief and no interference is called for at the interlocutory stage. Accordingly, I answer Point No. 1 in the negative.

17. Before parting with this order, I must state that observations made hereinabove are restricted to this Revision application and are *prima facie* one. The Labour Cout should not get influenced by the same while deciding the complaint finally and shall decide the same on merits. I am aware of the question of bread and butter of the struggling employees. Therefore, expeditious disposal of main complaint within two months from to-day will serve the purpose.

18. In the result, I pass the following order.

Order

(*i*) The Revision Application is dismissed.

(*ii*) R. & P. be sent to Labour Court forthwith and the parties shall appear there on 14th August 2002.

(*iii*) The Labour Court is directed to decide main complaint expeditiously within two months from to-day.

(*iv*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 9th August 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 319 of 2000.—Kolhapur Zilla Audyogik Kamgar Sanghatana, 1571, A, Shivaji Road, Bindu Chowk, Kolhapur, through its General Secretary.—*Complainant*—*Versus*—(1) Mayur Sahakari Dudh Sangh Ltd, 296/2, K, Mangrayachiwadi (Vadgaon), Tal. Hatkanagale, Dist. Kolhapur, through its Chairman.—*Respondent No. 1*, (2) Mayur Sahakari Dudh Sangh Ltd, 296/2, K, Mangrayachiwadi (Vadgaon), Tal. Hatkanagale, Dist. Kolhapur, through its Manager.—*Respondent No. 2.*

In the matter of Complaint U/s. 28(*1*) read with items 6, 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member

Advocates.— Shri V. D. Narvekar, Advocate for the Complainant.
Shri S. B. Desai, Advocate for the Respondents.

Judgment

This is a complaint purported to be under Section 28(*1*) read with items 6, 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

2. Admittedly, the Complainant—Union is registered under the Trade Unions Act. It is not recognised under the M.R.T.U. and P.U.L.P. Act for the Respondent-Dudh Sangh. There is no other recognised union under the M.R.T.U. and P.U.L.P. Act functioning in the establishment of Respondent Sangh. The Respondent Sangh is a Co-operative Society and is engaged in milk processing and preparation of its by products. It is working since last 6 years.

3. It is case of the Complainant Union that sixty employees named in the Annexure-A of the complaint are working for 3 to 5 years and have put continues service of more than 240 days in each of the year. Even then, they are terms as casuals or temporary and deprived with the benefits of permanency. The Sangh has not maintained muster roll, wage register and other registers, as prescribed by law. Moreover, none of them are extended with benefits of permanency like casual leave, earned leave, medical facilities etc. On the contrary, the Sangh is likely to terminate their services as they have became members of the Union. It is further alleged that Sangh is paying Rs. 56 per day to each of the employee and wages of weekly off are not paid. Minimum wages as prescribed by Government of Maharashtra are not paid to any of those employees since the date of joining.

4. On above averments, the Union has prayed for declaration of requisite unfair labour practices, directions to make all sixty employees permanent and to extend benefits of permanency to them, further direction to pay difference between prescribed minimum wages and wages actually paid and other consequential reliefs.

5. The Union also made an application (Exh. U-2) under Section 30(*2*) of the M.R.T.U. and P.U.L.P. Act to restrain the Sangh from terminating services of those named employees and direction to pay wages fixed under the Minimum Wages Act, till decision of main complaint.

6. Sangh's Chairman filed say cum written statement at Exh. C-2 and Sangh's Manager adopted the same *vide* purses Exh. CQ-2. They both traversed some of the material allegations made by the union.

7. It is contended by the sangh at the outset that it is registered under the Multi-State Co-operative Societies Act, has establishments in more than one State and, therefore, appropriate Government is Central Government as provided under the I. D. Act. Eventually, the complaint under M.R.T.U. and P.U.L.P. Act is not maintainable.

8. It is further case of the Sangh that the Union has no authority to function in the Milk industry. It is unware as to whether its employees are members of the Union and the Union be called upon to prove its authority as well as membership. In addition, the complaint is not filed by a recognised union and hence the same is not maintainable under the M.R.T.U. and P.U.L.P. Act.

9. It is further case of the Sangh that there is no category like permanent/temporary employees and all facilities are equally extended to all employees In fact, averments in the complaint are vague and baseless. Government of Maharashtra has not fixed minimum wages for 'dairy industry' and, therefore, question of paying less wages than minimum does not arise. Requisite registers are duly maintained. As such, apprehension of termination is vague and baseless.

10. In short, it is case of the Sangh that all of its employees are permanent employees and the wages are paid as per the Factories Act. It comes under 'dairy industry' for which no minimum wages are prescribed. It has denied all other material allegations and finally prayed for dismissal.

11. Considering rival pleadings, following points arise for my determination :—

(*i*) Whether the Complainant Union has *locus standi* to file the complaint ?

(*ii*) Whether the complaint is maintainable under the M.R.T.U. and P.U.L.P. Act, 1971 ?

(*iii*) Does the Complainant prove that the Respondent has employed employees as temporaries and continued them as such for years together with the object of depriving them of the status and privileges of permanent employees ?

(*iv*) Does the Complainant further prove that the Respondent is liable to pay minimum wages prescribed for employment in shop or Commercial Establishment or employment in any industry ?

(*v*) Does the Complainant further prove that the Sangh is engaged in untare Labour Practices under items 6, 9 & 10 of schedule IV of the M.R.T.U. and P.U.L.P. Act ?

(*vi*) What order ?

12. My findings on above points are as under :—

(*i*) Yes.

(*ii*) Yes.

(*iii*) No.

(*iv*) No.

(*v*) No.

(*vi*) The complaint is dismissed.

Reasons

13. Before adverting to rival contentions, I must state that during hearing of interim application (Exh. U-2) Advocate for the Sangh submitted that all employees of the Sangh are permanent employees. After hearing both parties, interim application (Exh. U-2) was rejected on 5th December 2000. The Union challenged said order by prefering writ Petition No. 1388/2001 before the Hon'ble High Court. During hearing of the Writ Petition Sangh's Advocate made a statement that the Sangh will not terminate any workman except by following due process of law and the same was accepted by the Hon'ble High Court. The Writ Petition was disposed off on 7th December 2001 with a direction to dispose off main complaint within six months from the date of receipt of writ.

14. The Union examined its Secretary Shri Pawar at Exh. UW-1. He testified that 61 employees of the Sangh became members of his Union in January, 2000 and copy of Union's Constitution and Rules is produced with list Exh. 17/1. Sangh's Advocate has not admitted it. The Sangh has examined its General Manager Shri Nikam at Exh. C-11. He testified that 5% employees of the Sangh are members of the Complainant Union.

15. Shri Narvekar, Learned Advocate for the Complainant argued that there is no recognised union functioning in the Sangh and hence complaint by an unrecognised union is maintainable. For that and, he relied on the decision in *Petroleum Employees Union* V/s. *Bharat Petroleum Corpn. Ltd., reported in 1993, Mah. L. J. at page 618.*

16. Shri Desai, Learned Advocate representing the Sangh replied that alleged Constitution and Rules of the Complainant Union is simply a zerox copy and has no evidentiary value. In addition, the same is only for "Engineering Industry" and not "Milk Industry". As such, it has no *locus standi* to file a complaint on behalf of employees in "Milk Industry". Moreover, alleged authority of 52 employees is produced on 10th November 2000 and not alongwith the complaint. There is no evidence on record regarding the correspondence. Therefore, false complain is filed to establish indentity and for an entry in the Sangh.

17. Despite serious objection regarding Complainant's authority to function in 'Dairy Industry' as well as *locus standi* to represent Sangh's employees, no material documents are produced on record by the Complainant in support thereof. Zerox Copy of the constitution and Bye-laws is produced. The same cannot be bellieved for want of its authetication. Likewise, membership receipts are also not produced. Authority of 52 employees produced with list Exh. U-15/2 is undated. But there is no recognised Union under the M.R.T.U. and P.U.L.P. Act in the Sangh. As such, any unrecognised union can represent employees of the Respondent Sangh. As regards authority of the Complainant to function in Milk Industry, there is no convincing evidence on record to establish the same. Sangh's General Manager, however has stated that 5% employees of the Sangh are members of the Complainant. In such circumstances, it is better to proceed further on merits rather than on technicalities. Accordingly, I answer point No. 1 in the affirmative.

18. As regards, application of the M.R.T.U. and P.U.L.P. Act, Sangh's Registration Certificate is not on record. One cannot presume that the same is registered under the Multi-State Co-operative Societies Act. Even otherwise, appropriate Government under the I. D. Act is the State Government. Section 2(*a*) of the I. D. Act defines the term "appropriate Government". Multi-state Co-operative Societies Act is not stated in the definition thereof. As such, provisions of the M.R.T.U. and P.U.L.P. Act are applicable, as per Section 2(*3*) of the M.R.T.U and P.U.L.P. Act, to the Sangh and the complaint is maintainable. Accordingly, I answer point No. 2 in the affirmative.

19. Union's Secretary although deposed that there were grievances of Sangh's employees regarding payment of wages for leave period, entering joining dates in the record, according permanency and correspondence between the Union and the Sangh, not a single letter is produced on record to substantiate the same. Sangh's General Manager has deposed that there were no negotiations. Shri Powar has also deposed that no written appointment orders of permanency are given to the employees and benefits of permanency are not extended to them.

20. Advocate Shri Narvekar argued that no orders of permanency are issued to any of the employees nor attendance cards are given. Wages of weekly off are also not paid. All such facilities are not given after visit of Factory Inspector. As such, unfair labour practice under item 6 of Sch. IV of the Act is attracted. He further added that date of permanency of one employee Rajmohmad Saheblal Desai is in dispute. Security Deposit of Rs. 10,000 was taken from him on 13th November 1998 and he is in continuous employment since them.

21. Shri Desai replied that wage-register produced with list Exh. C-5 bears endorsement that the employees are permanent. It was produced at Unions instance. Plea regarding unfair labour practice under items 6 of Sch. IV of the Act is vague and without material particulars. None of the employees are examined nor any of them complained to the Union that no wages are paid to them. There is nothing on record to suggest, even remotely, that any of the employees are not extended benefits of permanency. All other employees except Shri R. S. Desai are continously working since joining and no breaks were given to them. As such, there is no object or intention of depriving permanency to them.

22. I will consider case of Shri R. S. Desai in my later discussion. Union's Secretary Shri Powar has replied in cross-examination that no employee complained him regarding non-payment of wages, leave cards and attendance cards are miantained from the year 2001 onwards and there is no dispute regarding dates of appointments of employees named in the Annexure A of the complaint except Shri R. S. Desai. He has deposed in examination in Chief itself that now the only dispute is regarding date of permanency of Shri R. S. Desai. In my judgment, therefore, it cannot be accepted that employees are continued as temporary with the object of depriving permanency. The Sangh is accepting all the employees as permanent employees. No breaks are given to any of them. None have complained regarding non-payment of minimum wages. Now, all registers are maintained. Pleading regarding item 6 of Sch. IV of the M.R.T.U. and P.U.L.P. Act are vague and without material particulars. I, therefore, hold the Union has failed to prove unfair labour practice under item 6 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971 and accordingly, I answer point No. 3 in the negative.

23. As regards date of permanency of employee Shri R. S. Desai it is submitted by both Advocate that he has represented on 15th December 2001 and complaint regarding the same is pending before Labour Court, Kolhapur bearing Complaint (ULP) No. 81 of 2002.

24. According to the Sangh, employee Desai joined on 4th November 1998, was discontinued in November, 1995 and appointed afresh from 31st January 2000. Termination for any reason otherwise than as a punishment means a retrenchment. Legality of Shri Desai's termination/ retrerchment is now a question in the complaint pending before the Labour Court, Kolhapur which may be an unfair labour practice under item 1 of Sch. IV of the M.R.T.U. & P.U.L.P. Act. Eventually at judication regarding his date of permancy will amount to diciding controversy in the complaint before Labour Court and grouping jurisdiction of the Labour Court under items No. 1 of Schedule IV of the M.R.T.U. & P.U.L.P. Act. In such circumstances, it is better to get the controversy open and leave the same for adjudication of Labour Court.

25. It has come on the record that Government of Maharashtra has issued a Notification on 13th August 2001 fixing minimum wages for dairy industry under the Minimum Wages Act. Secretary Shri Power has replied in the cross-examination that all employees are paid minimum wages from 13th August 2001 as per said Notification. Eventually, question of paying minimum wages if applicable for the period prior to 13th August 2001 as per the Minimum Wages Act is to be answered.

26. Advocate Shri Narvekar argued that the Sangh is a Shop or Commercial Establishment. Employment in any shop or commercial employment is a scheduled employment under Section 2(*j*) of the Minimum Wages Act and hence payment of minimum wages fixed for such scheduled employment is satutory obligation of the Sangh. He further added that the Sangh itself has come with a case that it has applied for issuing a licence under the Factories Act and, therefore, minimum wages prescribed for employment in any factory *i.e.* scheduled employment No.71 must be paid to all the employees. He placed reliance on the decision in *The Copra. Trading Establishments and Others at Alleppi* V/s. *Industrial Tribunal reported in 1991 Lab. I. C. at page 3003.* He then placed relied on the decision in *M. Ashirwadan* V/s. *Capital Hair Dressers reported in 1988 (56) FLR at page 101* and *Ahemedabad Panjarpol Sanstha* V/s. *Miscl. Mazdoor Sabha* reported in *1987 Lab. I.C. at page 577.*

27. Advocate Desai replied that scheduled employment numbers 17 (Employment in any Shop or commercial Establishment) and 66 (Employment in any Factory) cannot be invoked here as those are applicable to the employments which are not included under any of the entries in Schedule 'Dairy Industry' Schedule Employment No. 71 was added by Government Notification, dated 5th December 1988. Thus, such schedule employment *i.e.* 'dairy industry' was already in existence when the Sangh established. A special provision was made by adding 'Dairy Industry' as 'Scheduled Employment' under the Minimum Wages Act and therefore, other Scheduled Employments can not apply to the Sangh. He placed reliance on the decision in *State of Gujarath* V/s. *Royal Tailor reported in 1998 (57) FLR at page 30(Summery of Cases) (Gujrath H. C.)*

28. The union has produced Notification dated 6th December 1996, issued under the Minimum Wages Act fixing minimum wages for employment in any factory. It is stated at the beginning itself that the Government of Maharashtra has decided to fix the minimum rates of wages payble to the employees employed in the employment in any Factory as defined under Clause (*m*) of Sec. *2* or within the meaning of Sub-section (*2*) of section 85 of the Factories Act not falling under any of the other entires in the schedule in the state of Maharashtra.

29. The Sangh has produced Government Notification dated 13th August 2001 whereby minimum rates of wages are fixed for 'Dairy Industry' *i.e.* 'Scheduled Employment No. 71'. Now, all employees are paid minimum wages from such date as per said Notification. Consequently, the Sangh is covered by 'Scheduled Employment No. 71' *i.e.* 'Dairy Industry'. It is not controverted that no minimum wages are fixed by the Government for 'Dairy Industry' prior to Notification dated 13th August 2001.

30. I am respectfully bound by the decision in Kerla High Court in case of *Copra Industry* V/s. *Industrial Tribunal* (referred supra). In that case, Notification, dated 26th September 1981 prescribing minimum rates of wages governed workers in 'Kanitta' as well as Oil Mill. Later on kanitta's workers were bifurcated from 'Scheduled Employment No. 5' (Employment in any Oil Mill) by introducing item No. 37 *i.e.* 'Kanitta Workers'. However, separate Notification directing minimum rates of wages for them was not issued. It was, therefore, held that 'kanitta workers' would continue to be governed by earlier prescribed rate of minimum wages. In the present case, Scheduled Employment No. 71 *i.e.* 'Dairy Industry' was already in existance when the Sangh was established. As such, above decision cannot be applied here.

31. In M. Ashorwadan's case (referred supra) it is held that Rules were covered in Notification issued under the Minimum Wages Act. In Ahmedabad Panjarpol Sastha's case, it is held that Panjarpol Sanstha is a 'Commercial Establishment' and is liable to pay minimum wages under the Minimum wages Act for 'Scheduled Employment No. 17' *i.e.* 'Employment in any shop or Commercial Establishment'. In both these cases, the employers were not covered by an employment which is included under any of the entries in the Schedule. The material question in this case is whether the Sangh is covered by 'Scheduled Employment No. 17 and 66' when it is covered by a specific Scheduled employment *i.e.* 'Dairy Industry'. Eventually, observations in above two decisions cannot be applied here.

32. In State of Gujrath *V/s.* Royal Tailor (referred supra), it is observed that it is well known rule of interpretation that when the special provision is made, the general provision would not apply.

33. Notification regarding 'scheduled employment No. 17' (shops & commercial establishment), specifically says that minimum rates of wages are revised in respect of employment *not being employment in any bank or an employment which is included under any of the other entries in the schedule to the said Act* (underlining supplied). Employment in 'Dairy Industry' (No. 71) is included in the Schedule to the minimum wages by the Government Notification, dated 5th December 1988. Thus Notification for scheduled employment No. 17 (shops or commercial establishment), cannot be made applicable to scheduled employment No. 71 *i.e.* (Employment in Dairy Industry). Same is the case in respect of Notification relied by the Complainant Union, produced with list Exh. U-15/4. It says that Government of Maharashtra has fixed minimum wages payable to the employees employed in the employment in any factory as defined under Section 2(*m*) of the Factories Act, 1948-*not felling under any of the* entries in the schedule (underlining supplied). As such, said Notification and minimum wages therein, cannot be applied for scheduled employment No. 71 (Employment in Dairy Industry).

34. Minimum rates of wages fixed for Scheduled Employment No. 17 and 66 are not applicable to any of the employments included under any of the employments which are included under any of the entries in the schedule to the Minimum Wages Act. Consequently, Sangh's employees were entitled to claim minimum wages if any prescribed for scheduled Employment No. 71 *i.e.* employment in 'Dairy Industry' only. Government of Maharashtra did not fix minimum

wages for 'Dairy Industry' till issuance of Notification dated 13th August 2001. Consequently, it can not be accepted that Sangh's employees were entitled to minimum wages, for the period prior to 13th August 2001, as per the rates for 'Scheduled Employment Nos. 17 and 66. There was, therefore, no statutory obligation on the Sangh to pay minimum wages at the rates fixed for other scheduled employments. Finally, I hold that the complainant has failed to prove point No.4. I answer the same accordingly.

35. To summerise, all the employees are accepted to be permanent. Date of permanency of employee Shri R. S. Desai is in dispute and such controversy is kept open for adjudication of Labour Court as a complaint thereof is pending. Respective employees are covered by Scheduled Employment No. 71 (Dairy Industry) and therefore, minimum wages fixed for Scheduled Employment No. 17 and 66 cannot be made applicable to them. Government of Maharashtra has fixed minimum wages for 'Dairy Industry' by Notification dated 13th August 2001. Consequently, the employees cannot claim minimum rates of wages for other Scheduled Employments or prior to 13 August 2001. I, therefore, hold that the Complainant has failed to prove alleged unfair labour practices. Accordingly, I answer point No.5 in the negative.

36. To conclude, I pass following order :—

Order

(*i*) The complaint is dismissed.

(*ii*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 22nd July 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE MEMBER, INDUSTRIAL COURT, MAHARASHTRA, KOLHAPUR

REVISION APPLICATION (ULP) No. 52/2002.—Shri Padmakar Bandopant Naik, Janasahib Darga, Mhaishal Vesh, Miraj, Dist. Sangli.—*Petitioner. V/s.* Shri Mahalaxmi Co-op. Bank Ltd., Head Office, 167-B, Shri Bhavan, Kolhapur.—*Respondent.*

In the matter of Revision U/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Appearances.—Shri A. G. Pansare, Advocate for the Petitioner.

Shri A. R. Toro, Advocate for the Respondent.

Judgment

This is a Revision by original Complainant challenging legality of order passed below Exh. U-2 in Complaint (ULP) No. 188 of 2000 by Labour Court, Kolhapur whereby relief of interim temporary reinstatement, till decision of main complaint, is refused.

2. Admittedly, present Petitioner (hereinafter referred to as the Complainant) was in employment of present Respondent (hereinafter referred to as the Bank) as a watchman. He was on duty on 3rd August 2000. Bank's Manager gave a surprise visist at 9 p.m. on that day and found a lady present there.

3. It is case of the Complainant that said lady was his wife, came there to see him and he explained such fact to the Manager. However, the Manager threatened to beat him, drage to the Police Station and put both them behind bars and then obtained a resignation by duress from him. Later on, he was not allowed to join duties. It is further alleged that alleged resignation is involuntary. According to the Complainant, therefore, refusal to allow him to join duties on 4th August 2000 amounts to oral termination and is an unfair labour practice under items 1(*a*), (*b*) and (*d*) of Sch. IV of the M.R.T.U. and P.U.L.P. Act. He also made an application (Exh. U-2) under section 30 (*2*) of the M.R.T.U. and P.U.L.P. Act to direct the Bank to allow him to join duties, till disposal of main complaint.

4. Learned Labour Court made an *ex-parte* order on 11th August, 2000 directing the Bank to temporarily allow the Complainant to resume duties if the Complainant is not personaly served with acceptance or rejection of his alleged forced resignation.

5. The Bank filed its written statement at Exh. C-15 contending that the lady found with the Complainant is not his legally wedded wife and she was called with some ulterior motive. The Complainant was found red-handed and hence voluntarily gave his resignation. The resignation was accepted and the Complainant was relieved. He was informed accordingly by letter dated 4th August 2000. As such, there is no unfair labour practice on its part. In addition, it is case of the Bank that allegations of obtaining resignation by duress can be decided only after recording oral evidence and hence no *prima facie* case of unfair labour practice is made out.

6. Above complaint came to be filed on 11th August 2000. The Complainant made an application on 27th October 2000 to the Bank that he was resigned on 3rd August 2000, is relieved from service and amount of due bonus be paid to him. The Bank produced original resignation, copy of Certified Standing Orders and copies of letters sent to the Complainant with list Exh. C-14. No documents were produced by the Complainant.

7. Learned Labour Court on perusal of evidence and hearing both parties observed that the controversy has to be decided after recording evidence and cannot be decided only on the basis of arguments and at interim stage. It then observed that the resignation is accepted, then communicated to the Complainant and no *prima faice* case of forced resignation is made out. Ultimately, it rejected the interim application (Exh. U-2) by order dated 27th June 2002. The same is challenged in this Revision.

8. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned order refusing to grant interim relief warrants interference ?

(*ii*) What order ?

9. My findings on above points, are as under :—

(*i*) No.

(*ii*) The revision application is dismissed.

Reasons

10. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scrutinse the rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse or justifiable ?

11. Shri Pansare, learned Advocate representing the Complainant argued that there is no evidence about communication of acceptance letter dated 4th August 2000 to the Complainant. Interim *ex-parte* order was passed directing the Bank to allow the Complainant to join if the Complainant is not personally served with acceptance or rejection of his alleged forced resignation. As such, the Bank ought to have allowed the Complainant to join duties. Bank's plea that the Complainant was already relieved and hence *ex-parte* interim order became infractuous, is therefore unsustainable. He then added that the Complainant was in employment as on in any case on the date of presentation of the complaint and hence the Bank was under obligation to allow him to join duties. Besides, no written relieving order was served upon the Complainant. As such, *prima facie*, case of forced resignation is made out. He placed reliance on a decision in *Shivkumar & Ors. V/s. State of Haryana reported in 1994 II CLR-* at page 408 (S. C.) and *Management of Karnataka State Road Transport Corporation V/s. M. B. Ramkrishna reported in 2001 I CLR at page 959.*

12. Shri Toro, learned Advocate representing the Bank replied that Complainant's resignation was accepted, he was relieved from duty and accordingly was informed by letter dated 4th August 2000. Entry of sending letter is made in outward register and copy thereof is produced on record. As such, the resignation was accepted and question of allowing him to join services as per *ex-parte* order of the Labour Court, does not arise. Plea of forced resignation cannot be decided without appraising evidence and hence no *prima facie* case is made out. Thus, he supported impugned order.

13. I am respectfully bound by both decisions (referred supra) relied by Advocate Shri Pansare. In Shivkumar's case, question of service of notices to concerned workman of application for permission to retrech was material. In the present case, question of acceptance of resignation is secondary. Material question is whether resignation was obtained by duress or not. As such observations in Shivkumar's case are of no help to the Complainant.

14. In Karnataka State Road Transport Corporation's case, question about withdrawal of resignation prior to its acceptance was material. Ultimately, the Complainant has not withdrawn the resignation. As such, said decision is also of no help to the Complainant.

15. The Complainant has now here complained to the Police or even Bank's Higher Authorities regarding alleged forced resignation. On the contrary, he did not take any action till 11th August 2000 though was not allowed to join duties from 4th August 2000. The controversy can only be decided after appreciation of oral evidence, if any. It appears from the contentions of alleged forced resignation that the Complainant was found with a lady during duty hours. *Bonafides* or *malafides* thereof can be decided while deciding the complaint finally, *prima facie*, no *malafides* are attributed Bank's Manager as to why he insisted for resignation. I, therefore, find that learned Labour Court has rightly held that no *prima facie* case of unfair labour practice is made out. As such, no interference is called for. Accordingly, I answer Point No. 1 in the negative.

16. Before parting with this Judgment, I must state that observations made hereinabove are strictly restricted to the hearing of this application only and at *prima facie* stage. The Labour Court should not get influenced by the same and decide the complaint finally on merits.

17. To conclude, I pass the following order.

Order

(*i*) The Revision Application is dismissed.

(*ii*) R. & P. be sent to Labour Court, Kolhapur forthwith and the parties shall appear there on 19th August 2002.

(*iii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated 14th August 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE JUDGE, EMPLOYEES INSURANCE COURT, KOLHAPUR

APPEAL (ESI) No. 8 OF 1998.—Shri Meghashyam Krishnaji Hovale, Maharashtra Housing Board, 9/90, Ashok Nagar, Ichalkaranji, Dist. Kolhapur.—*Appellant V/s.* (1) The Regional Director, Employees State Insurance Corporation, PMT Commercial Building, Shankar Shet Road, Pune.—*Respondent No. 1.* (2) The Chairman, Medical Board, ESIC, Director of Health Services, Mantralaya, Bombay—*Respondent No. 2.*

In the matter of Appeal U/s. 54-A (*2*) (*ii*) of the Employees State Insurance Act, 1948.

CORAM—Shri C. A. Jadhav, Member.

Appearances.—Shri M. S. Topkar, Advocate for Appellant.
Shri S. V. Kotnis, Advocate for the Respondents.

Judgment

This is an a Appeal by an insured person under section 54-A (*2*) (*ii*) of the Employees State Insurance Act, 1948 challenging decision of the Medical Board that there is no disability and no loss of function to him due to the accident.

2. Admittedly, the Appellant was serving as Boiler Attendant with Kolhapur Zilla Shetkari Vinkar Sahakari Soot Girni Ltd., Ichalkaranji. He is an insured person having Insurance No. 35/89307. The Spinning Mill sent and Accident Report that, that he met with an accident on 5th February, 1985 while on duty. He was then treated at the E. S. I. Hospital and then at the Government Hospital. He was then referred to the Medical Board for determination of disablement question. The Board then opined that there is no disability and there is no loss of function.

3. The Appellant then made an application (ESI) No. 5/86 to this Court under section 75 of the Employees State Insurance Act for determining amount of compensation. The same was rejected on 4th April, 1994 on the ground that the dispute is outside of the scope of section 75 of the Act. It was observed that a decision contrary to the Report of the Board cannot be given on an application under section 75 of the Employees Insurance Act by relying upon a decision in *E.S.I. Corporation V/s. Hazishekha reported in 1977 Lab. I. C. at page 1175.* It was also observed that the Appellant has not filed an appeal against the report of the Medical Board.

4. Eventually, this appeal was filed on 15th June, 1994. Delay in filing the appeal was condoned by my learned Predecessor *vide* order dated 17th September, 1998 passed in Miscl. Application (ESI) No. 1 of 1994.

5. It is case of the Appellant that he attended Medical Board on 11th March, 1986, however, the members did not throughly examined him. The Members simply introgated him. He explained about the pain and tried to put his case but the Members did not pay and heed and asked him to go. It is alleged that Report of the Medical Board is without application of mind, without examining him, hypothetical one and unsustainable in law. Eventually, he has prayed for setting aside report of the Medical Board, grant of appropriate compensation with interest and other consequential reliefs.

6. The Respondent filed its reply at Exh. 5 contending that the Appellant was throughly examined by Member of the Board who were expert Doctors and rightly gave opinion of no disablement. Thus, the Respondent justified Medical Board's Report and prayed for dismissal of the Appeal.

7. Considering rival pleadings, following points arise for my determination :—

(i) Does the Appellant prove that he has sustained 100% disability and Report of Medical Board is false ?

(ii) What order ?

8. My findings on above points, are as under :—

(1) No

(2) The Appeal is dismissed.

Reasons

9. The Appellant produced zerox copies of Accident Report from employer, Report for information of Medical Board and Medical Board's Report. In addition, he examined himself at Exh. UW-1. No documentary or oral evidence was adduced by the Respondent.

10. The Appellant deposed in terms of his pleadings. He replied that he was paid attendant charges by the E. S. I. Corporation, while was under treatment with E.S.I. Hospital at Ichalkaranji. He further replied that he is not going to examine any Doctor to prove alleged disability.

11. Shri Topkar, learned Advocate representing the Appellant cavassed that the Respondent ought to have produced examination papers, if any of the Medical Board and its non-production justify Appellants claim. In reply, Shri Kotnis, learned Advocate representing the E. S. I. Corporation submitted that burden lies on the Appellant to prove his case and non-examination of any Doctor falcify his claim.

12. It is settled law that burden lies upon a person who asserts and cannot take advantage of weakness of other side. In the present case, burden lies on the Appellant to prove 100% disability. His interested version for want of satisfying and convincing medical evidence, cannot be applied. I, have no difficulty to hold that he has failed to prove 100% disability in the accident. Accordingly, I answer Point No. 1 in the negative and pass following order :—

Order

(i) The Appeal is dismissed.

(ii) No order as to costs.

C. A. JADHAV,
Member,
Employees Insurance Court, Kolhapur.

Kolhapur,
Dated 2nd August 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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BEFORE THE JUDGE, EMPLOYEES INSURANCE COURT AT KOLHAPUR

APPLICATION (ESI) No. 1 of 2002.—Hotel Ayodhya (Akshata Mangal Karyalay), 517-B, Tararani Chowk, Kawala Naka, Kolhapur, through its Partner.—*Applicant*—*Versus*—(1) Employees' State Insurance Corporation, Sub-Regional Office, Panchadeep Bhavan, Bibvewadi, Pune, through its Assistant Director.—*Opponent No. 1*, (2) Employees State Insurance Corporation, Sub-Regional Office, Pune, through its Director.—*Opponent No. 2.*

In the matter of an Application u/s. 77 of read with 75(*a*), (*a*) and (*g*) of Employees State Insurance Act, 1948.

Shri V. D. Narvekar, Advocate for the Applicant.

Shri S. V. Kotnis, Advocate for the Opponents.

Judgment

This is an application under section 77 read with section 75(*1*) (*a*) and (*g*) of the Employees State Insurance Act, 1948 for a declaration that the Applicant/firm is unamendable to provisions of said Act and directing the Opponents not to recover requisite contribution from the Applicant.

2. Opponent No. 1 *i.e.* Assistant Director of Employees State Insurance Corporation made demand of contribution from the Applicant, *vide* order dated 31st July, 2001. Later on, Corporation's Recovery Officer directed the Corporation to pay contribution of Rs. 1,22,617 by demand notice dated 12th October, 2001. Recovery Officer then ordered Manager of Bank of Baroda, Shivaji Putala Branch, Kolhapur prohibiting and restraining him from making payment of Rs. 1,22,297 to any person. The Applicant has Account with the said Bank.

3. It is case of the Applicant that it is a partnership firm and is constituted on 27th March, 1989. It took certain premises on lease and started business of "Mangal Karyalaya" therein. It then started separate, new and different business of lodging in the adjacent premises from 19th April, 1998. It is alleged that both businesses are distinct and separate and has no nexus at all. Both business are unamendable to provisions of E. S. I. Act. Even then Respondent No. 1 directed to pay the contribution.

4. The Applicant then made an application (Exh. 9) to remand the dispute for reconsideration and under took to deposit 50% amount without prejudice. Advocate for the Respondents replied that ample opportunity was given to the Applicant. In alternate, he stated that the Applicant be directed to deposit 100% amount in case the dispute is remanded for reconsideration.

5. Now, following points arise for my determination :—

(*i*) Whether fresh and de-novo investigation is necessary for deciding the dispute effectively ?

(*ii*) What order ?

6. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Application is partly allowed.

Reasons

7. The Applicant has raised many contentions in the application while challenging action of the Opponents. Its main grievance is that there is no unity of management between the two businesses and that he is not amenable to provision of E. S. I. Act. In my judgment, it is better to decide the controversy on merits after giving reasonable opportunity to the Applicant. The Applicant has shown willingness to deposit 50% amount under protest his offer appears to be *bonafide* and needs to be upheld. Accordingly, I answer point No. 1 in the affirmative.

8. Before parting with this judgment, certain time limit needs to be fixed. As such, the Opponents are directed to complete de-novo enquiry within 6 months from to-day. The Applicant shall deposit 50% amount out of claim of Rs. 1,27,292 with the Opponents, within 15 days from to-day. On deposit of such amount, Recovery order dated 31st July, 2007 stands set-aside.

9. Finally, I pass following order :—

Order

(*i*) The Application is partly allowed.

(*ii*) The Applicant shall deposit 50% out of claim of Rs. 1,27,297 with the Opponents within 15 days from to-day. On deposit of such amount demand notice and consequential order will automatically stands set-aside.

(*iii*) The Applicant is directed to produce all relevant papers with the Opponents and the Opponent shall investigate entire de-novo by a comprehensive verification and then shall take appropriate action, according to provisions of law.

(*iv*) De-novo enquiry shall be completed within six months from to-day.

(*v*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur and
Judge, Employees Insurance Court, Kolhapur.

Kolhapur,
Dated 7th August, 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE JUDGE, EMPLOYEES INSURANCE COURT AT KOLHAPUR

APPLICATION (ESI) No. 13 OF 1991.—Standard Fabricators, Proprietary Concern, through its Proprietor Shri Shamrao Dnyandeo Mohite, 1029, E-Gavat Mandai, Shivaji Udyamnagar, Kolhapur.—*Applicant—Versus*—(1) Shri C. N. Ravindranath, Assistant Regional Director, Employees State Insurance Corpn., PMT Commercial Complex, Swargate, Pune.—*Opponent No. 1*, (2) Regional Director, Employees State Insurance Corpn. PMT Commercial Complex, Swargate, Pune.—*Opponent No. 2.*

In the matter of an Application U/s. 77 read with 75(*1*), (*a*) and (*g*) of Employees State Insurance Act, 1948.

CORAM.— C. A. Jadhav, Judge.

Advocates.— Shri A. S. Nevagi, Advocate for the Applicant.

Shri S. V. Kotnis, Advocate for the Opponents.

Judgment

This is an application under section 77 read with section 75(*1*) (*a*) and (*g*) of the Employees State Insurance Act for a declaration that the Applicant/firm is unamenable to provisions of said Act and directing the Opponents not to recover requisite contribution from the Applicant.

2. It is case of the Applicant that it is a proprietary firm and is engaged in fabrication business. It is registered under the Bombay Shops and Establishments Act. It always employs less than 10 persons. Eventually, provisions of Factories Act are not applicable. Shri Nayar Inspector of Opponent Corporation visited its premises on 17th December, 1989 and made a report that 12 employees are engaged. In fact, he was informed on the spot that 5 persons are not the employees but visited its premises for collection of finished goods.

3. On report, of said Inspector, Opponent No. 2 informed the Applicant to pay ESI contribution. It is alleged that the Applicant then replied and explained the factual situation. The Opponent then directed the Applicant to pay contribution of Rs. 11,635 by order dated 30th July 1990.

4. It is further alleged by the Applicant that another Inspector Ramaiah visited its premises on 8th August 1989 and found that nine persons were employed. Out of them two persons were employed on 8th August 1989. In fact, the Applicant is not covered by provisions of ESI Act.

5. The Opponents, justified their action *vide* written statement Exh. 10. They contended that opportunity of personal hearing was given to the Applicant but the same was not availed. In fact, 12 persons were employed when Factory Inspector visited the premises and hence the Applicant is covered by provisions of ESI Act. Finally, they prayed for dismissal of the application.

6. The Applicant then made an application (Exh. 18) contending that it can put its case afresh before the Opponents and then the Opponents can pass appropriate order. Opponents filed reply at Exh. 19 contending that ample opportunity of hearing was given to the Applicant and hence fresh hearing is unwarranted. In the alternate, it is pleaded that the Applicant be directed to deposit 100% amount of the claim in case fresh hearing is directed.

7. Now, following points arise for my determination :—

(*i*) Whether fresh and de-novo investigation is necessary for deciding the dispute effectively ?

(*ii*) What order ?

8. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Application is partly allowed.

Reasons

9. The Applicant has raised multifold objections in the application while challenging action of the Opponent. Its main grievance is about non-application of the E. S. I. Act and failure to give reasonable opportunity of being heard while directing payment of contribution. The Application is pending since more than 10 years. In such circumstances, it is better to have fresh hearing again. De-novo hearing will be proper and will prevent multiplicity of the proceedings. At the same time, the applicant has to pay some amount towards his alleged contribution. In my judgment, deposit of 50% amount of out of the contribution will be proper. A fresh enquiry will meet the ends of justice. Accordingly, I answer point No. 1 in the affirmative.

10. Before parting with this judgment, certain time limit needs to be fixed. As such, the Opponents are directed to complete de-novo enquiry within 6 months from to-day. The Applicant shall deposit 50% amount out of claim of Rs. 11,635 with the Opponents, within 15 days from to-day. On deposit of such amount, Recovery Officer's order dated 30th July 1990 stands set-aside.

11. Finally, I pass following order :—

Order

(*i*) The Application is partly allowed.

(*ii*) The Applicant shall deposit 50% out of claim of Rs. 11,635 with the Opponents within 15 days from today. On deposit of such amount demand notice and consequential orders will automatically stands set-aside.

(*iii*) The Applicant is directed to produce all relevant papers with the Opponents and the Opponent shall investigate entire case de-novo by a comprehensive verification and then shall take appropriate action, according to provisions of law.

(*iv*) De-novo enquiry shall be completed within six months from today.

(*v*) No order as to costs.

C. A. JADHAV,
Judge,
Employees Insurance Court, Kolhapur.

Kolhapur,
Dated 7th August 2002.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 358 of 1999.—Shri Pravin Mahadevrao Malvadkar, R/o. House No. 27/639, Samata Colony, Osmanabad.—*Complainant—Versus*— (1) The Joint Director, Health Services (Maleria and Fileria) Opposite Vishrantwadi Police Station, Pune-6.—*Respondent No. 1*, (2) District Maleria Officer, Buchade Building, Sambhajinagar, Kolhapur.—*Respondent No. 2,* (3) Medical Officer, Primary Health Center, Gaganbavada, Dist. Kolhapur—*Respondent No. 3.*

In the matter of Complaint u/s. 28(*1*) read with items 6, 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri D. S. Desai, Advocate for the Complainant.

Shri D. J. Mangsule, Assistant Government Pleader for the Respondents.

Judgment

This is a Complaint under section 28(*1*) read with item 6, 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

2. Admittedly, Respondent No. 1 *i.e.* Joint Director, Health Services (Maleria and Fileria) Pune is Administrative Head for all Districts of Maharashtra. All offices of District Maleria Officer are controlled by him. He has authority to appoint Lab-Technician for Maleria and Fileria Programme. Accordingly, he appointed the Complainant on vacant post of Lab Technician under District Maleria Officer of Osmanabad, *vide* order dated 29th June 1993 for the periods from 3rd July 1993 to 31st July 1993 and 9th August 1993 to 6th September 1993. The appointment order does not say that the appointment is subject to recommendations or availability of a candidate from Selection Board. Respondent No. 1 then appointed the Complainant, from time to time on the post of Lab Technician by separate orders of 29 days each. Some times, the Complainant was appointed as Superial Field Worker by separate orders of 29 days each. As per Respondents themselves, the Complainant worked as Lab Technician for 87 days in the year 1993, 87 days in the year 1994, 173 days from 5th August 1996 to 25th January 1997 and 174 days from 24th March 1999 to 10th September 1999. He also worked as Superior Field Worker for 116 days in the year 1995.

3. This complaint was filed on 20th August 1999 alleging that the Complainant was appointed on clear vacant post of Lab Technician on 3rd July 1993, but was given artificial breaks by appointing him for 29 days each. Even then, he worked on the days of artificial Breaks, as directed, without wages. It is alleged that the Government of Maharashtra has resolved on 8th March 1999 to grant permanency to 3761 employees and the Complainant is one of them. As such, he is entitled to permanency on both grounds. In fact, he was purposely appointed by giving artificial breaks with the object of depriving him status of permanency, though he is doing work of perennial nature. There exists permanent vacant posts of Lab Technicians. He is entitled to permanency on completion of 3 years continues service as per various Government Resolutions. Failure of the Respondents to grant permanency to him is an unfair labour practice under items 6, 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

4. On above averments, the Complainant has prayed for declaration of an unfair labour practice, direction to grant permanency and status thereof from 30th July 1993 and other consequential reliefs.

5. The Complainant also made an application (Exh. U-2) under section 30(*2*) of the M.R.T.U. and P.U.L.P. Act restraining the Respondent from terminating his services till decision of main complaint.

6. Respondent No. 2 *i.e.* District Maleria Officer, filed say cum written statement at Exh. C-3, on behalf of Respondents. It is case of the Respondents that the Complainant was temporarily appointed as and when work was available and that too for a specific period. As

such, he was not given any notional or artificial breaks. He never worked during intervening idle period, as alleged. He was appointed firstly at Osmanabad, then at Kolhapur and then again at Osmanabad. He never put continues service of 240 days in any calender year, nor of one year. As such, he is not eligible to the benefits of Government Resolution dated 8th March 1999. Therefore, there is no unfair labour practice on their part. Finally, the Respondents prayed for dismissal of the complaint.

7. Considering rival pleadings, following issues were framed by me at Exh. O-1 :—

(*i*) Does the Complainant prove that he was appointed and continued as temporary for years, with the object of depriving him of the status and privileges of permanent employees ?

(*ii*) Does the Complainant further prove that Respondent No. 1 has indulged into unfair labour practice under item 6 of Sch. IV of the Act ?

(*iii*) What order ?

8. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) Yes.

(*iii*) The complaint is partly allowed.

Reasons

9. It needs to be stated, at the outset that the interim application (Exh. U-2) was allowed by my learned Predocessor, after hearing both parties on 8th September 1999 and the Respondents were directed to maintain *status quo* regarding Complainant's employment till decision of main complaint. Respondents 1 and 3 challenged said order in the Hon'ble High Court *vide* Writ Petition No. 3380 of 2001. The same was dismissed on 31st August 2001 with a direction to decide this complaint on or before 31st June 2002.

10. The Complainant, in support of his claim, produced some of the appointment orders and Government Resolution dated 8th March 1999 with list Exh. U-4. He then sought details from the Respondents regarding his total working days as well as details of sanctioned, appointed and vacant posts of Lab. Technician under Respondent No. 1 for the years 1993 to 1999. Respondent No. 1 then produced copy of his letter dated 2nd August 2001 sent to Director, Health Services, Bombay showing details of sanctioned, appointed and vacant posts for the years 1991-92 to 1999 to 2000. He then examined himself at Exh. UW-1.

11. In rebuttal, the Respondents produced documents regarding sanction of man days for superior field workers. They then examined Chief Administrative Officer of Respondent No. 1 Shri Sonkamble at Exh. C-14.

12. It has come on the record that the Complainant is a Science Graduate with B-Group and was holding requisite educational qualification for the post of Lab. Technician when appointed. His birth date is 19th June 1966, be belongs to other backward class category and age limit for appointing a candidate of such category on the post of Lab. Technician is 35 years.

13. The Complainant deposed that he was appointed on the vacant post of Lab. Technician from time to time. He worked as Superior Field worker for the intervening period *i.e.* the periods for which he was appointed as Lab. Technician. He then added that he was doing work of Lab. Technician while working as Superior Field Worker. He explained that Selection Board was not in existance when was appointed on the post of Lab. Technician. He was illegally discontinued on 29th March 2000 while working at Gagan Bavada (Kolhapur District). Respondent No. 1 appointed a female candidate as Lab Technician at Gagan Bavada. He then filed Criminal Complaint No. 11/2000 before Labour Court for contempt of interim order and then was appointed at Palghar on 18th August 2000. He was then again posted by order dated 12th October 2002 at Halkarni, District Kolhapur and still working there.

14. Chief Administrative Officer Shri Sonkamble deposed that the Complainant was appointed against a vacant post for a fixed period to meet out urgent work-load as it takes ample time to get a regular candidate from selection board. He explained in the cross examination that Regional Selection Board was desolved *vide* Government Regolution dated 8th March 1999 and it was not in existance when the Complainant was lastly appointed on 16th March 1999. I must state here itself that appointment order dated 16th March 1999 contains a clause that the appointment is for a period of 170 days or till receipt of a candidate from Selection Board, whichever is earlier.

15. Shri Desai, learned advocate representing the Complainant argued that Respondent No. 1 has authority to make appointments on the post of Lab. Technician in all over Maharashtra. Selection Board was not in existance when the Complainant was lastly appointed on 16th March 1999. As such, explanation of the Respondents that the Complainant was appointed to meet out urgent work-load till appointment of a candidate from the selection board is totally false. Besides, the Complainant possess requisite educational qualification and is not age barred. Many posts of Lab. Technicians are still vacant. Thus, a very intention of appointing the Complainant as temporary, from time to time, is to deprive him benefits of permanency. He further added that completion of 240 days service in a calender year is not a condition precedent for invoking item 6 of Sch. IV of the MRTU and PULP Act. Item 6 has no reference to a requirement of 240 days but the object of depriving benefits of permanency is a sole requirement. As such, unfair labour practice under item 6 is proved. In support of his arguments, he relied on a decision between *Burroughs Welcome (I) Ltd.* V/s. *D. H. Ghosale and Ors. reported in 2000 III CLR at page 264.*

16. Learned Assistant Government Pleader Shri Mangsule preferred to file written arguments (Exh. C-17). He pointed out working days of the Complainant as a Lab. Technician and Superior Field Worker and has contended that the Complainant had never worked continously for 240 days. According to him, appointment on the post of Lab. Technician in the year 1993 was to be made through Divisional Selection Board and now a committee is constituted at District level from 1st March, 2000 for recruitment. The Complainant is not recruited through the Selection Board and hence is not entitled to permanency.

17. There are no separate posts of Superior Field Worker but only man-days are sanctioned. As such, there is no unfair labour practice by Respondent No. 2.

18. Item 6 of Sch. IV of the MRTU and PULP Act nowhere says that completion of 240 days is a sine-qua-non for invoking the same. Such proposition is well clarified in Burroughs Welcome (I) Ltd's case (referred supra). It is observed that items 6 has no reference at all to a requirement of 240 days work but there has to be put an employment for years together with the object of depriving status and privileges of a permanent employees. Thus, the emphasis is on the object. In other words, there cannot be a hard and fast rule that a casual workman should be made permanent as soon as puts continous service of 240 days.

19. In the present case, it has come on the record that there are still many vacant posts. The Complainant was appointed as against vacant post of Lab. Technician, from time to time. It clearly spells that there is work of perennial nature. Although, it is stated by the Chief Administrative Officer that no perennial work was available while appointing the Complainant, Complainant's appointment from time to time, falcify his such version. He deposed in examination-in-chief itself that about 120 posts of Lab. Technicians were filled in the year 2000 through Selection Board. Consequently it cannot be accepted that the Complainant was appointed for a period only when work was available. Had it been so, there was no necessity of appointing 120 lab. Technicians in the year 2000.

20. It is not in dispute that the Complainant possesses requisite educational qualification and is not age barred for the post of Lab. Technician. It is observed in Burroughs Welcome (I) Ltd.'s case (referred supra) that a broad realistic view should be taken when a complaint arises out of a item 6 of Sch. IV of the MRTU and PULP Act and an inference would have to be drawn if the circumstances so warranted as regards the object for which an employees had been kept as temporaries for years together. Admittedly, the Selection Board was not in existance when

the Complainant was lastly appointed on 16th March, 1999. Eventually, it cannot be accepted that Complainant's appointment was subject to recommendations or appointment of a candidate through Selection Board. As such his claim for permanency is quite legal and proper. It is interesting to note that first three appointment orders on the post of Lab. Technician nowhere state that the appointment is subject to availability of a candidate from Staff Selection Board. Selection Board was not in existance on 16th March, 1999. Eventually, it cannot be accepted that a candidate should be recommended by such Board. As such, justification of Respondent No. 1 that the Complainant was appointed to meet out temporary workload does not stand to reason. On the contrary, it is established that he was appointed as temporary from time to time to deprive him benefits of permanency. According, I answer point No. 1 in the affirmative.

21. In the background of above findings the Complainant is entitled to permanency. Now question arises about the date from which he is entitled to permanency. The complaint is filed on 20th August 1999. Advocate Desai submitted that the Complainant is willing to forego past claim as per Government Resolution dated 8th March 1999. Apart from application or non-application of said Resolution, in my judgment, the Complainant is bound by his statement. As held in Burroughs Welcome (I) Ltd.'s case (referred supra) permanency was granted to workman therein from the date on which the complaint was filed before the Industrial Court. In this case, the Complainant is willing to forego past benefits. As such, he is not entitled to past benefits. He is entitled to permanency from the date of presentation of the complaint.

22. In the result, I pass following order :—

Order

(*i*) The Complaint is partly allowed.

(*ii*) It is declared that Respondent No. 1 has indulged into an unfair labour practice under item 6 of Sch. IV of the MRTU and PULP Act, 1971.

(*iii*) Respondent No. 1 is directed to cease and desist from engaging in such unfair labour practice forthwith.

(*iv*) Respondent No. 1 is directed to grant benefits of permanency to the Complainant with effect from 20th August 1999 together with all consequential benefits, within one month from today.

(*v*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated 31st July 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT AT KOLHAPUR

REVISION APPLICATION (ULP) No. 210 of 1997.—Mrs. Archana Ashok Adivarekar, Khadilkar Galli, Brahminpuri, Miraj, Dist. Sangli.—*Petitioner—Vs.*— Dr. Anil Manohar Thatte, Dhanvantari Clinic, Megh Apartment, Brahminpuri, Miraj, Dist. Sangli.—*Respondent.*— REVISION APPLICATION (ULP) No. 153 of 1998.—Dr. Anil Manohar Thatte, Near Maidan Datta Mandir, Brahminpuri, Miraj, Dist. Sangli.—*Petitioner—Vs.*—Mrs. Archana Ashok Adivarekar, Khadilkar Galli, Brahminpuri, Miraj, Dist. Sangli.—*Respondent.*

In the matter of Revision U/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocate.— Shri H. G. Bhokare, Advocate for the Petitioner.
Shri A. M. Patwardhan, Advocate for the Respondent.

Judgment

These Revision are arising out of a common judgment and order passed in Complaint (ULP) Nos. 2/94 and 53/95 by Labour Court, Sangli, whereby relief of reinstatement with continuity of service and full back wages is refused by granting compensation of Rs. 15000.

2. Revision Application (ULP) No. 210 of 1997 is preferred by original Complainant for setting aside order granting compensation of Rs. 15000 and then directing reinstatement with continuity of services and full back wages. Revision (ULP) No.153/98 is preferred by original Respondent challenging legality of declaration of an unfair labour practice and direction to pay compensation of Rs. 15000 to the Complainant.

3. Admittedly petitioner Revision (ULP) 210 of 1997 who is Respondent in Revision (ULP) No. 153 of 1998 (hereinafter referred to as the Complainant) was in employment of Respondent of Revision (ULP) 210 of 1997 who is Petitioner of Revision (ULP) No. 153 of 1998 (hereinafter referred to as the Respondent) as a Receptionist. The Respondent was running a clinic namely Dhanvantari Clinic at Miraj.

4. Complaint (ULP) No. 2/94 was filed on 7th January, 1994 *interalia*, contending that the Complainant joined with the Respondent as Receptionist from 1st September, 1987 on a consolidated wages of Rs. 200 per month. She was never paid wages according to Minimum Wages Act and her last drawn wages Rs. 700 per month. It is alleged that the Respondent was not honest to his profession, used to sale free samples of medicines and charging ex-orbitantly to the patients. The Complainant had nothing to do with such activities. However, the Respondent suspected that the she may disclose his illegal activities and then started harassing her. It is further alleged that the Complainant demanded wage rise in August, 1993, the Respondent then demanded her resignation but she refused. No service record of any employee was kept till March, 1993 and signatures of all employees including the Complainant were taken on blank receipts. The Complainant refused to sign blank receipts in November, 1993. One nurse namely Mrs. Done insulted and assaulted her. Even then, the Respondent did not take any action against Mrs. Done, justified the incident and then pushed her out from the premises of Clinic on 26th November, 1993. The Respondent then did not allow her to join duties on 29th November, 1993. On such averments, it was alleged that the Respondent orally terminated her services with effect from 26th November, 1993 which is an unfair labour practice under item 1 of Sch. IV of the MRTU and PULP Act. Eventually, a declaration of unfair labour practices, reinstatement with continuity of service and full back wages and other reliefs were claimed.

5. The Complainant also made an application (Ex. U-2) under Section 30(*2*) of the MRTU and PULP Act to direct the Respondent to allow her to join duties till disposal of main complaint, *vide* order dated 16th February, 1994.

6. The Respondent filed his say *cum* written statement at Exh. C-4 contending that he started a small clinic as a paediatrits. There were no surgical cases or indoor patients and hence he alone was maintaining all affairs of the clinic with the help of her wife. The Complainant

due to acquintance with him, occasionaly used to help him in doing incidental work but there was no relationship as employer employee. He shifted in a large premises in the year 1993 and then employed the Complainant as a full time Receptionist from 1st March 1993 only. A quarrel took place between the Complainant and her co-employee on 26th November 1993. The Complainant did not attend duties thereafter. The Complainant then came on 29th November 1993 stated herself that she has given up the services, has obtained better job with Dr. Mohan Bhat and would join there on 1st December 1993. As such, there is no oral termination at all. Eventually, the Respondent prayed for dismissal of the Complaint (ULP) No. 2/94.

7. Learned Labour Court, on hearing both parties allowed the interim application (Exh. U-2) and directed the Respondent to allow the Complainant to join the duties, till decision of main complaint. Eventually, the Respondent allowed her to join duties from 3rd March 1994. It appears that the Complainant then filed Application (IDA) No. 5/95 against the Respondent for recovery of arrears of minimum wages. The Respondent then terminated Complainant's services by notice/order dated 31st May 1995. It is alleged in said termination order that the Complainant was offered retrenchment compensation, notice pay etc. on 31st May 1995 alongwith the notice by the Complainant refused to accept the same and hence the notice and compensation is sent by Registered Post Acknowledge Due.

8. The Complainant then filed Complaint (ULP) No. 53/95 before the Labour Court, Sangli on 27th July 1995 challenging her termination dated 31st May 1995. She contended that the Respondent got much annoyed on account of interim orders in Complaint (ULP) No. 2/94 and presentation of an application against him for recovery arrears of minimum wages. The Respondent then cooked a plan and illegelly terminated her without prior permission of the Court as well as in contravention of provision of Section 25 F of the I. D. Act. In fact, she is working from 1st September 1987 but it is falsely written in termination order that she is working from 1st March 1993. She received termination order on 1st June 1995. She then gave a reply through her Advocate and returned demand draft enclosed with termination order to the Respondent. It is further alleged that calculation of retrenchment compensation, notice pay etc. is not correct and false. Besides, reasons put forth for terminating her services are totally false, imaginary and unfounded. In fact, the Respondent has not at all changed his profession. He has alleged that the hospital is situated in same building of the hospital. Finally, it is alleged that her termination is an unfair labour practice under item 1 of Sch. IV of the MRTU and PULP Act. Eventually, a declaration of unfair labour practice, reinstatement with continuity of service and full back wages and other reliefs were claimed.

9. The Complainant also made an application (Exh. U-2) under Section 30(*2*) of the MRTU and PULP Act to direct the Respondent to allow her to join duties till disposal of main complaint.

10. The Respondent filed his say *cum* written statement at Exh. C-3 denying all material allegations. He contended that the Complainant was employed from 1st March 1993 only and not from 1st September 1987 as alleged. It is case of the Respondent that he decided to engage in consulting only and not to run a hospital. Now, he wishes to concentrate on selected cases only and medical practice for a few hours a day. Now, he wishes to work as visiting consultant in other institution and spend more time there. Consequently, he decised to terminate services of the Complainant by paying retrenchment compensation, notice pay etc. It is further contended by him that he has every right to terminate services of the Complainant by following legal procedure. Termination order alongwith requisite compensation was tendered to the Complainant on 31st May 1993 but she refused to accept the same. Thus, the Respondent justified its action and prayed for dismissal of the complaint.

11. The Labour Court passed an order below interim application (Exh. U-2) of Complaint (ULP) No. 53 of 1995 directing the Respondent to deposit monthly wages of the Complainant in the Court on or before 7th day of each month till disposal of main complaint. The Respondent challenged said order before this Court *vide* Revision Application (ULP) No. 396/95 which came to be dismissed on 29th September 1995.

12. The Labour Court then framed issued at Exh. O-3 and the parties then went to the Trial. The Complainant then examined herself, Respondent's driver Laxman Rathod, sweeper Pramila Dabhade and many patients. She also examined Government Labour Officer Shri Kininge. She produced registration cards of many patients through the patient witnesses. In rebuttal, the Respondent examined himself, his two patients and a medical representative. He produced his muster rolls for the periods 1st April 1983 to 31st May 1988 and 1st March 1993 to 31st May 1995, as demanded by the Complainant.

13. Learned Labour Court on perusal of evidence and hearing both parties firstly held that the Respondent orally terminated Complainant's services on 29th November 1993 in contravention of mandatory provisions of Section 25 F of the I. D. Act, which is an unfair labour practice under items 1(*b*), (*e*) and (*f*) of Sch. IV of the M.R.T.U. and P.U.L.P. Act, Simultaneously, it held that it is not victimisation. It then held that later termination dated 31st May 1995 is well justifiable. It further held that the Complainant was not gainfully employed after termination. Ultimately, it held that compensation of Rs. 15000 to the Complainant in lieu of reinstatement will meet the ends of justice and accordingly, partly allowed the complaint *vide* order dated 24th April 1997. The same challenged in these Revisions.

14. I heard both advocates at length. Considering rival submissions, following points arise for my determination :—

(*i*) Whether finding of the Labour Court that Complainant services were orally terminated on 29th November 1993 and it is an unfair labour practice, is justifiable ?

(*ii*) Whether finding of Labour Court that later termination dated 31st May 1995 is legal and proper, is justifiable ?

(*iii*) Whether impugned decision granting compensation of Rs. 15,000 to the Complainant needs interference ?

(*iv*) What order ?

15. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) Yes.

(*iii*) No.

(*iv*) Both Revision Applications are dismissed.

Reasons

16. It is not controverted that the Complainant worked with the Respondent from 3rd March 1994 to 31st May 1995. It is also come on record that the Complainant worked with Dr. Bhat in January 1994. The Respondent has produced some medical cards of Dr. Bhat bearing signatures of the Complainant, with list Exh. C-7 and the Complainant has admitted that handwriting thereon is of her.

17. Shri Patwardhan, learned Advocate representing the Respondent argued that the Complainant did not send notice alleging her oral termination, after 27th November 1993. On the contrary, she started working with Dr. Bhat. As such, Respondent's plea that the Complainant voluntarily left the service is reasonable and proper. Relations between the Complainant and the Respondent were cordial and hence the Respondent did not take resignation or any writing from the Complainant.

18. Shri Bhokare, learned Advocate representing the Complainant replied that there is absolutely no evidence to show that the Complainant started working with Dr. Bhat from 1st December 1993. The Respondent did not allow her to join duties and then she joined Dr. Bhat in January 1994 in voluntarily. She was working from the year 1987 and will not immediately leave her job.

19. The Respondent has not led evidence to show that the Complainant started working with Dr. Bhat from 1st November 1993. There is no evidence to show that the Complainant immediately joined dispensary of Dr. Bhat from 1st December 1993. As such, learned Labour Court has rightly disbelived Respondent's plea of giving up her services. Reasoning thereof is reasonable, proper and needs no interference. It is settled law that evidence cannot be reappreciated while entertaining revision under Section 44 of the M.R.T.U. and P.U.L.P. Act. Generally, an employee does not give up his job unless another better job is available. It is also material to note that the Complainant again joined the Respondent on 3rd March 1994. Her such conduct implies that the job with Dr. Bhat was not better one but was involuntarily. Thus, learned Labour Court has rightly held that Complainant's services were orally terminated on 29th November 1993 and it is an unfair labour practice. Accordingly, I answer point No. 1 in the affirmative.

20. It is not contraverted that the Respondent sent termination order alongwith demand draft of Rs. 5,017.80 to the Complainant by registered post and she received the same on 1st June 1995. The Complainant then replied the same through her Advocate and returned the demand draft. According to the Complainant, termination notice and retrechment compensation was not tendered on 31st May 1995 whereas the Respondent says that it was tendered but the Complainant refused to accept the same.

21. Learned Labour Court has recorded a factual finding that demand draft is dated 31st May 1995 and considering all such circumstances, there is no reason to dis-believe Respondent's plea regarding tender and refusal. Termination notice bears an endorsement that the Complainant was offered retrenchment compensation, notice pay etc. on 31st May 1995. She refused to accept the same and hence notice of termination, retrenchment compensation is sent by registered post acknowledgement due. Admittedly, notice of termination and demand draft was received by the Complainant on 1st June 1995. Eventually, it has to be accepted that the same was sent to the Complainant by post on 31st May 1995. Thus, the tender of compensation is quite legal and proper.

22. The material controversy is regarding the date from which the Complainant is working with the Respondent. According to the Complainant she is working from 1st September 1987 whereas the Respondent says from 1st March 1993. It is not in dispute that calculation of retrechment compensation is proper if it is held that the Complainant was working from 1st March 1993.

23. The Complainant has examined many witnesses to establish that she was working from 1st September 1987. Patient Vasant Garg (Exh. U-22) has deposed that the Complainant is working with the Respondent since the year 1988 and produced his case papers. Other patient witnesses also produced their cards. Card produced by witness Smt. Smita Suryawanshi is of August, 1992. He testified that the Complainant is working from the year 1989.

24. Advocate Shri Bhokare argued that the Complainant has specifically come with a case that the Respondent has not maintained service record till March, 1993 and therefore, version of patient witnesses ought to have been believed by the Labour Court. If the Complainant was not working from 1st September 1987 then there would not have been her acquaintance with many patients and her hand writing on medical cards of the year 1992. Consequently, calculation of retrenchment compensation is bad and the Complainant is entitled to reinstatement with continuity of service and full back wages. But the Labour Court blindly believed the muster rolls and all together ignored evidence of patient witnesses without any reason. He further added that the Complainant was terminated without permission of Labour Court.

25. Advocate Shri Patwardhan replied that muster for the period 1st April 1983 to 31st May 1988 and 1st March 1993 to August 1995 are produced on record on application of the Complainant herself. Therefore her plea that no record was maintained till March, 1993 logically

fails. Besides, muster for the period 1st March 1993 to August 1995 say that the Complainant has joined on 1st March 1993. The Complainant has nowhere objected regarding her such date of appointment while signine the same and accepting the salary. Therefore, plea of working from 1st September 1987 is totally after thought. He further explained that the Complainant occassionaly used to help the Respondent, in the past and hence some medical cards are in her hand writing. But it nowhere establishes that there was relationship of master and servant.

26. It is settlled law that documentary evidence has to be believed as against the oral evidence. Although, it is alleged in the complaint that no service record is maintained by the Respondent, said record is produced by the Respondent himself. Authenticity thereof is nowhere challenged. Consequently allegation of non-maintainance of record prior to a March, 1988 do not inspire confidence. On the contrary, it is seen that service record was maintained. Musters from 1st March 1993 are material. It is specifically written therein that the Complainant is working from 1st March 1993. She has nowhere complained that the date therein is incorrect. Further she has not complained about such date even when worked from 3rd March 1994 to 31st May 1995. She has signed the muster rolls from time to time and especially from March, 1994 to April 1995. In such circumstances, I find that learned Labour Court has rightly believed documentary evidence *i.e.* of muster rolls regarding Complainant's date of appointment as against oral evidence. As such learned Labour Court has rightly held that the Complainant was in service of the Respondent from 1st March 1993.

27. As regards, reasons for terminating the Complainant, Advocate Shri Bhokare argued that the Respondent did not obtain permission of the Labour Court for the same. The Respondent continued his practice as earlier and thus reasons put forth are false and imaginary. There is no logic for granting compensation of Rs. 15000 in lieu of reinstatement and the Labour Court ought to have granted reinstatement with continuity of service and full back wages.

28. Advocate Shri Patwardhan replied that it is for the Respondent to monitor nature of his profession. He decided to close the hospital, do consulting only and engage more in teaching. No-body is appointed after terminating the Complainant. He further submitted that no employee was found working with the Respondent when Minimum wage Inspector visited the premises of the Respondent on 24th January 1996. Eventually, reasons for termination are genuine one. He further added that grant of compensation of Rs. 15,000 even after holding that terminated date 31st May 1995 is not for patently false reasons, is unsustainable in law.

29. Learned Labour Court has observed that it was choice of the Respondent to close his hospital and then to terminate or retrech the Complainant by following due process of law. There is no evidence on record to show that the Respondent continued the Hospital as before after terminating the Complainant. No employee was found to be working with him when Minimum Wage Inspector gave surprise visit on 24th January 1996. In my judgment, therefore, reasons for termination or retrenchment cannot be faulted with. Accordingly, I answer point No. 2 in the affirmative.

30. Advocate Shri Patwardhan argued that the Complainant is legally terminated by paying retrenchment compensation and the Respondent was well within his rights to do so. Even then, the labour Court has granted compensation of Rs. 15,000 mainly on the ground that its permission was not obtained. Such finding of the Labour Court is unsustainable in law.

31. No doubt, the Respondent was directed to allow the Complainant to resume the duties till decision of Complaint (ULP) No. 2/94, *vide* order below Exh. U-2 therein. But it nowhere implies that the Respondent cannot terminate her services even by following due procedure of law. Eventually, finding of labour Court that Complainant's termination dated 31st May 1995 is not in good faith but colourable exercise of employer's right unsustainable in law, is liable to be set-aside and hereby set-aside.

32. But the controversy does not end here. The Complainant has proved that her services were orally terminated on 31st March 1993 and it is an unfair labour practice. Eventually, considering peculiar facts and circumstances of this case, as well as justifiability of later termination, final order directing compensation of Rs.15,000 to the Complainant is well justifiable. As such, no interference is called for. Accordingly, I answer point No. 3 in the negative.

33. Finally, I pass following order :—

Order

(*i*) Both Revision Applications are dismissed.

(*ii*) A copy of this Judgement be kept in other Revision Application.

(*iii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated 7th August 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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